GOVERNMENT OF MADRAS

Rural welfare (1952) Department.

Endorsement
D.O.
Memorandum
Lodged

No. 10535/52-3

Dated 30.5.52 195

FURTHER PAPERS. on Page 15 5

Department.	Number.	Series.	Date.
Rur. Memo	3760 R.W.E /52.	4	30.5.52
"	5824 & R.W.E /52.	3	11-10-52

ADDITIONAL ASST. SECRETARY TO GOVERNMENT
22 FEB 1952
PUBLIC (RURAL WELFARE) DEPARTMENT

Office of the Commissioner for Hindu Religious and Charitable Endowments, (Adm) Department, M a d r a s-6.

Letter No. 5170/52-2 Jdl dated 19-2-1952.

From

Sri T.V. Chinnaiya Pillai. M.A., B.L.,
Commissioner,
Hindu Religious and Charitable Endowments,
Madras-6

RECD
ASSISTANT SECRETARY TO GOVT.
1053
22 FEB 1952
RURAL WELFARE DEPARTMENT

To

The Secretary to the Government of Madras,
Rural Welfare Department, Fort St.George, Madras.

Sir,

Sub: The Madras Hindu Religious and Charitable Endowments Act 1951- Section 103(a)(j) and (k)- Difficulties Instructions- requested

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committee of the (defunct) Board decided under section 53-A of Act II of 1927 in its order No.1635 dated 5-4-50 that K.V.Kunhambu Nair, the hereditary trustee should be removed from office. Againsh the said decision the said trustee filed an application under section 53-A(4) O.P.No.54/50 in the District Court, S.Kanara, as early as June 1950. The Board was the first respondent and opposed the application. The O.P. was pending on 30-9-1951.

On 20-10-1951, the District Judge passed an order that under section 103(a)(j) and (k) of the present Hindu Religious and Charitable Endowments Act, the proceedings could not be continued before him and has forwarded the entire suit papers to the Deputy Commissioner, Hindu Religious and Charitable Endowments, Coimbatore, who has retransmitted the same to me as under section 45(5) the Commissioner is the appellate authority against an order of removal of a trustee.

2. It appears to me that the District Court's order is erroneous. The provision of the Act applicable to the O.P. in question is section 103(j). As the present Act does not provide for an application or suit in court against an order of removal of a trustee, the proceeding in the O.P. is inconsistent with the Act and cannot be continued. In this view,

the court should have passed an order to this effect leaving it to the petitioner to file an appeal or revision in the High Court if so advised. Section 103(k) referred to by the Judge cannot apply as it applies to proceedings pending with the Department on the commencement of the Act in respect of which remedy by way of suit in court is provided by the new Act. In any event, the order of the Board having been made by a committee of which I was a member, I cannot properly treat the petition in the O.P. as an appeal and dispose of it.

Even assuming that the matter has to be dealt with by this department, the District Court, should have returned the petition to the petitioner in the O.P. who set the machinery of the court in motion and not have sent the papers direct to the Deputy Commissioner. The Court is not an appellate authority over a Commissioner or the Deputy Commissioner and has no power to remand a matter to the latter.

3. In the circumstances, the question is as to what should be done. As the effect of the District Court's order is not cancellation of the Board's order, this Department cannot agitate the matter in the High Court. As the Department is a party in the O.P. it will be inappropriate to enter into correspondence with the District Judge in this matter. Government may be pleased to issue instructions as to what may be done. In this connection, attention is invited to the view taken on item 3 in Memo No.57191 R.W.(V)/51-3 dated 6-12-1951.

P.T.O.

4. The file received from the Deputy Commissioner will sent for reference and return.

Yours faithfully,

Commissioner.

R.P. Enc: 1. file of 64 pages
H.R.20.2.

Rural Welfare Deptt.(V)

MEMORANDUM NO. 10535 RW(V)/52-2 Dated 21-4-1952.

Sub: H.R.E - Sri Adukkath Bhagavathi temple, Bedadkar, South Kanara Dt. - Removal of Sri Kunhiramen Nair, hereditary trustee.

Ref: From the Commissioner, H.R.&.C.E.(Admn)Deptt. letter No. 5170/52-2 Jdl. dated 19-2-52.

The Commissioner, Hindu Religious and Charitable Endowments (A) is informed that by virtue of section 103(a) of the Madras Hindu Religious and Charitable Endowments Act, 1951(Madras Act XIX of 1951) the order removing the hereditary trustee in the above case should be deemed to be an order made by the Deputy Commissioner under section 45(1) of that Act. Under section 45(5) the trustee will have a right of appeal from the order of a Deputy Commissioner to Commissioner. Although there is nothing in the order of the District Judge dated 20-10-51 indicating the exact authority or person to whom the papers should be forwarded, they have been sent to the Deputy Commissioner from the Court of the District Judge. The attention of the District Judge may be drawn to his orders dated 20-10-51 and also to the fact that the papers have been forwarded to the Deputy Commissioner instead of to the Commissioner and he may be requested to have the papers transferred to him. The Commissioner is requested to take the necessary steps in consultation with the local Govt.Pleader.

To
The Commissioner,
H.R.&.C.E. (Admn)Deptt.
Madras.
(with encl.(J) returned in original)

Office of the Commissioner for Hindu
Religious and Charitable Endowments,
Madras.2.

Letter No.5170/51 Jdl.3 Dated 13-5-1952.

From

Sri T.M. Chinnaiya Pillai, M.A., B.L.,
Commissioner for Hindu Religious and
Charitable Endowments, Madras.2.

The Secretary to Government of Madras,
Rural Welfare Department, Fort St. George, Madras.

Sir,

Sub: Hindu Religious and Charitable Endowments Act 1951
Sections 103(a)(j) and(k) - Difficulties.

Ref: Government Memorandum No.19535 R.W.(V)/52-2 dated 21-4-52.

It has been suggested by the Legal Department that the attention of the District judge may be invited to the fact that the papers have been sent to the Deputy Commissioner instead of the Commissioner and he may be requested to transmit the papers to the Commissioner as the Commissioner is the appropriate authority. This will not solve the problem because just as in the two cases dealt with in my Letter to Government No.129997/51 Jdl. dated 12-5-52, the order of the Board sought to be set aside in the O.P. in question was made under section 53-A of Act II of 1927 by a Committee of the Board of which I was a member as President of the Board. Hence, just as in the other cases, it will be anomalous for me to deal with the matter as appellate authority.

2. The District Judge transferred the papers to the Deputy Commissioner on the ground that under section 103(j) the District Court is not the forum to dispose of suits and applications instituted under Act II of 1927. He did not in terms say that the Deputy Commissioner or the Commissioner has to deal with the O.P. in question. In fact the order does not state to whom the papers in the O.P. are to be sent. Copies of the order and decretal order in the O.P. are forwarded for ready reference. The court overlooked the fact

p.t.o.

that, even if the subject matter of the O.P. can be dealt with by the Commissioner, the Commissioner is not a tribunal or a court to which the District Court could, under law, remand or transfer a proceeding. If the court felt that it had no jurisdiction to deal with the O.P. the normal course would be to return the petition to the petitioner for presentation to the proper authority.

3. It seems to me that the appropriate course to be taken now is to send the papers to the District Court with a covering letter saying that the order made by the Board under section 53-A(1) of Madras Act II of 1927 is, under section 103(a) of the present Act, to be deemed to be an order made by the Deputy Commissioner under section 45(1) that under section 45(5) the Commissioner is the appellate authority, that therefore the Deputy Commissioner cannot deal with the subject matter of the O.P, if it is to be treated as an appeal under section 45(5) and that the Deputy Commissioner and the Commissioner not being a court to which the O.P. can be transferred or remanded, the petition may be returned to the petitioner for representation to the proper authority if the District Court decides that it has no jurisdiction to try the O.P. The Deputy Commissioner may also be asked to give information to the District Court that the Commissioner was a party to the order sought to be set aside in the O.P.

Government may say whether the above course may be adopted.

4. I am addressing Sri K.S. Hegde, the Government Pleader who appeared in the case (he is said to have ceased to be Government Pleader) to say why the papers were sent by the District Court to the Deputy Commissioner and whether they may be sent back to the District Judge with a letter suggested above.

Yours faithfully,

PB.14-5-52.
Enclosures: 2.
1. order in O.P.54/50.
2. Decretal order in O.P.54/50.

Commissioner.

14/5/52

IN THE COURT OF THE DISTRICT JUDGE OF SOUTH KANARA.

Present: Sri P.T. Raman Nayar, I.C.S.,
District Judge.

Saturday, the 20th day of Octo-ber,1951.

Original Petition No.54 of 1950.

Between:

Kamalon Veliyaveetil Kunhambu Nair — Petitioner

and

1. The Hindu Religious Endowment Board, by its President, Sri Chinnayya Pillai, Thainampet, Madras.
2. V.Chathu Kutti Nair.
3. N. Govindan Nambivar.

— Respondents.

Petition dated 23-6-1950 under section 53A(4) of the Madras Hindu Religious Endowments Act praying that the order of the Ist respondent Board O.A.No.54 of 1950 dated 5-4-1950 may be set aside and that directions may be given to the respondent not to interfere with the legitimate rights of the petitioner and due exercise thereof.

This petition coming on for hearing this day in the presence of Sri K. Babu Rao, advocate, and Sri B. Vaikunta Baliga, pleader, for the petitioner and Sri K.S. Hegde, advocate for the ist respondment, Sri U. Vishwanath, advocate, and Sri G. Somashekhar Rao, pleader for the 2nd respondent and Sri K.K.C. Nambiyar, advocate for the 3rd respondent, the Court passed the following

O R D E R

Under the new Act (Act XIX of 1951) the jurisdiction to hear and determine the various suits and applications instituted under the old Act (Act II of 1927) is vested in other Courts and authorities and the explanation to section 103(j) of the new Act (which is a proviso rather than an explanation) makes it quite clear that the proceedings cannot be continued here. Although the language employed is by no means explicit, I think the effect of clauses (j) and (k) of section 103 of the new Act is to create the fiction that these pending proceedings were instituted under the new Act before the appropriate Court or authority. In other words on the date the new Act came into force these proceedings stood

p.t.o.

automatically transferred to the appropriate Court or authority and must now be deemed to be pending before that Court or authority. All that remains for this Court to do is the physical act of consigning the records to the Court or authority before which the proceedings concerned must now be deemed to be pending and this will be done.

Pronounced in open ✱ Court, this, the 20th day of October, 1951.

Sd x x x x x x
District Judge.

PB.14-5-52. (TRUE COPY)

IN THE COURT OF THE DISTRICT JUDGE OF SOUTH KANARA.

Present: Sri P.T. Raman Nayar, I.C.S.,
District Judge.

Saturday, the 20th day of October, 1951.

Original Petition No.54 of 1950.

Between:

Kamalon Veliyavettil Kunhambu Nair, nephew of K.V.Koman Nair, Landholder, residing in Bedadka village of Kasaragod Taluk.) Petitioner.

and

1. The Hindu Religious Endowment Board by its President, Sri Chinnayya Pillai, Thainampet, Madras.

2. V.K. ChathuKutti Nair, nephew of V.K.Krishnan Nair, landholder, residing in Bedadka village, Kasaragod Taluk.

3. N. Govindan Nambiyar, son of Kunhi Raman Adiyodi, landholder, residing in Kasaragod Kasba, Kasaragod Taluk.) Respondents.

Petition dated 23-6-1950 under section 53A(4) of the Madras Hindu Religious Endowments Act praying that the order of the Ist respondent Board, O.A.No.54 of 1950 dated 5-4-1950 may be set aside and that directions may be given to the respondent not to interfere with the legitimate rights of the petitioner and due exercise thereof.

This petition coming on for hearing this day in the presence of Sri K. Babu Rao, Advocate, and Sri B. Vaikunta Baliga, pleader for the petitioner and Sri K.S. Hegde, advocate for the Ist respondent, Sri U, Vishwanath, advocate, and Sri G. Somashekhara Rao, pleader, for the 2nd respondent, and Sri K.K.C. Nambiyar, advocate for the 3rd respondent, it is ordered that the records be and are consigned to the Court or authority before which the proceedings must now be deemed to be pending.

Given under my hand and the seal of the Court, this, the 20th day of October 1951.

Sd x x x x x x x
District Judge.

PB.15-5-52. (THREE COPY)

~~DRAFT-II~~

Rural Welfare Department (V)

MEMORANDUM NO. 10535 RW(V)/52-3 Dated 30.5.1952.

Sub: H.R.&.C.E.Act, 1951 - Section 103 s(a),(j) & (k) - Difficulties.

Ref: From the Commissioner, H.R.&.C.E.(Admn)Deptt. letter No.5170/52-3 Jdl. dated 19-5-52.

The Commissioner, Hindu Religious and Charitable Endowments (Administration)Department is requested to take legal opinion in the matter and proceed accordingly.

To
The Commissioner, H.R.&.C.E(Admn)
Department, Madras.

ASSISTANT SECRETARY TO GOVERNMENT
5209
4-AUG 1952
RURAL WELFARE DEPARTMENT

Office of the Commissioner for Hindu Religious and Charitable Endowments, Madras.2.

Letter No.5170/51- Judl.6 dated 26-7-52.

From
Sri T.M. Chinnaiya Pillai, M.A.,B.L.,
Commissioner for Hindu Religious and
Charitable Endowments, Madras.2.

ADDITIONAL ASST. SECRETARY TO GOVERNMENT
4-AUG 1952
RURAL WELFARE DEPARTMENT

To
The Secretary to the Government of Madras,
Rural Welfare Department, Fort St. George, Madras.

Sir,

Sub: Hindu Religious and Charitable Endowments Act 1951
Section 103(a)(j)(k) - Difficulties.

Ref: 1. My Letter to Government No. 5170/51 Jdl.3 dated 13-5-52.
2. Government Memo.No. 10535 RW(V)52-3 dated 30-5-52.

A copy of the letter received from Sri K.S. Hegde, Ex.Government Pleader, Mangalore is enclosed. As suggested by him, I am asking the Deputy Commissioner to return the papers to the District Judge. A copy of my communication to the Deputy Commissioner is forwarded.

Yours faithfully,

COMMISSIONER.

PB. 29-7-52.

Enclosures: 2.

Office of the Commissioner for Hindu
Religious and Charitable Endowments,
Madras.8.

In the matter of Sri Adukkath Bhagavathy temple, Bedaka, Kasaragod taluk, South Kanara.
Ref: Letter No. 801/51 Legal dated 31-1-52 from the Deputy Commissioner, Coimbatore forwarding the papers in O.P.54/50, District Court, South Kanara.

Memorandum No.5170/51 Legal dated 25-7-52.

In his order dated dated 30-10-51, in O.P.No. 54/50, the District Judge, South Kanara took the view that the ... cannot be continued in the District Court and that the record has to be considered to the appropriate authority. Apparently in accordance with this order, the records were transmitted to the Deputy Commissioner, Coimbatore.

The Bench having made the order so that it may be set aside if ... the Deputy Commissioner is not the appropriate authority to deal with the subject matter of the O.P. Besides, the said ... 's order was made by a Committee of the Board of which the Deputy Commissioner is a member by virtue of his capacity as President of the Board. ... petition to be taken was duly considered and the Commissioner has been advised that the proper course to be adopted is for the Deputy Commissioner to return the papers to the District Judge, South Kanara, stating that the Board, Commissioner regrets that the law does permit him to take the proceedings in the ... on his file as he can deal only with proceedings instituted before him.

The file received from the Deputy Commissioner is returned herewith

P.T.O.

4

The Deputy Commissioner is requested to arrange to send it back to the District Judge, with a suitable covering letter saying that the law does not permit him (the Deputy Commissioner) to take the proceedings in the O.P. on his file that he (the Deputy Commissioner) is not the appropriate authority and that therefore the papers are returned.

S. Nayar
29 7

for Commissioner.

29.7.52

RB. 29-7-52.
To Sri R. Venkataraja Aiyar, M.A.,
Deputy Commissioner, H.R.& C.E.
(Adn.) Department, H.S. Puram,
Coimbatore. (Enclosure: 1 file).
CC. Extra.

FROM
K.S. HEGDE, M.A.,B.L.,
Ex-Government Pleader of
S.K.
Member, Council of States.

Ex
Office of the Government Pleader,
South Kanara,
Mangalore.

To
The Commissioner, H.R.& C.E.,
Madras.2.

CONFIDENTIAL.

Sir,

Subject:-O.P.No.54/50 District Court - South Kanara.
Ref: Your Letter No.5170-51 Jdl.4 dated 13-5-1952.

I regret that I could not reply your letter earlier. I was out of station and away in Delhin in connection with the meeting of the Council of States.

I have examined the facts of the case. I am inclined to think that the order of the learned District Judge may not be quite appropriate. It is undoubtedly true that the provision of Section 103 of the Madras H.R.&C.E. Act 1951 lacks clarity. The phraseology of Section103 (j) and (k) of the Act are not happy: Section 103(j) lays down that all pending suits, applications and proceedings against the Board may be continued by or on behalf of or against the Commissioner. The explanation to the said sub-section which is really a proviso lays down that in so far as suits and applications pending in the High Court, they shall be continued in the High Court. From these provisions an inference can be drawn that the Legislatures intended that all proceedings pending before the Fora other than the High Court should be enquired into by the new authorities constituted under the Act. Section 103(k) lays down "that any remedy by way of application, suit, or appeal which is provided by the Act shall be available in respect of proceedings under the said Act pending at the commencement of this Act as if the proceedings in respect of which the remedy sought has been instituted under this Act" Reading this sub section along with the Section 45(1) of the Act we can come to the following conclusions.

(1) All orders passed under the old Act in which further proceedings are pending shall be deemed to have been passed under the new Act. The order will be further deemed to have been passed by the corresponding authorities constituted under the new Act and under the appropriate provisions of the new Act.

(2) Any remedy by way of application, suit or appeal which is provided by this Act shall be available to the aggrieved party in respect of those orders and under the provisions of the new Act.

Whereas under Section 103(j) and the explanation thereunder, it is specifically stated that suits, applications and proceedings may be continued. There are no similar words in Section 103(k). The statute simply gives powers to the concerned parties to take de-novo actions under the appropriate provisions of the new Act. It will not be a continuation of the old proceedings.

I am of opinion that the learned District Judge should have returned the applications as he had become functus-officio and it was for the party to seek his remedy under appropriate provisions and before the duly constitued authorities. The District Judge is not clothed with powers to transmit papers either to the Commissioner or Deputy Commissioner. The papers could be returned to the District Judge with a request that the Deputy Commissioner has been unable to take on file those proceedings as there are no appropriate provisions on law to adopt that course. The order of the District Judge so far it transmits the papers to the Deputy Commissioner cannot be deemed to be a judicial order but only an administrative order. It will not be proper for the Commissioner or Deputy Commissioner to tell the District Judge to return the papers to the party as it is a matter for him to decide. All that the Deputy Commissioner could intimate the Judge is that he regrets that the law does not permit him to take on file the proceedings except those which are duly instituted before him.

I remain, Yours faithfully,
K.S.Hegde, 15-5-

(TRUE COPY) 2-5-52.)

Rev. V

The M. H. R. & C. E. Act, 1951 - Sec. 103(a) of the Diffculties

From the Comm. Lr No. 5170/52-2 Dtd. d. 19.2.52.

Please see the letter from the Comm. H.R. & C.E. (A) Dept. in this file.

A similar question has been raised by the Comm. in another connection & the file has been sent to Legal, for advice, under this dept. No. V 3760/52-1 d. 2.2.52. The present one this question also should be examined along with the question dealt with in that file. This may therefore be sent to Legal for advice.

W.V.No.10535-V/52-1
3.3.52.

29.2.52

1.3.52 3.3.52

Legal.

ASSISTANT SECRETARY 333 16 MAR 1952 LEGAL DEPARTMENT

1774/52

1ST

Legal (Opinions) Department

This case was discussed by me with the Commissioner, Hindu Religious and Charitable Endowments on the 10th April 1952

2. By virtue of section 103(a) of the Madras Hindu Religious and Charitable Endowments Act. 1951 (M.A. XIX of 1951), the order removing e hereditary trustee should be deemed to be an order made by the Deputy ommissioner under section 45(1) of that Act. Under section 45(5), the trustee will have a right of appeal from the order of a Deputy Commissioner to the Commissioner. Although there is nothing in the order of the District Judge at p. 25 of (J) indicating the exact authority or person to whom the papers should be forwarded, they have been sent to the Deputy Commissioner from the Court of the District Judge. This, however, is a ministerial act. The District Judge's attention may perhaps be drawn to his order at p. 25 of (J) and also to the fact that the papers have been forwarded to the Deputy Commissioner instead of to the Commissioner, and he may perhaps be requested to have the papers transmitted to the Commissioner. This will be in accordance with the direction

contained in the District Judge's order, read in the context of the new Act. The Commissioner may be requested to take the necessary steps in consultation with the local Government Pleader.

12/4/52

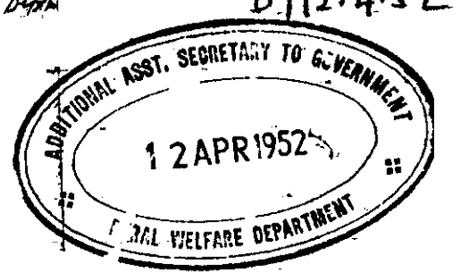
R.W. Dept

26040

Legal. no. 3335/52-1

Rural Welfare Dept

D. 12.4.52



Please see the note of Legal Dept. from page 1 ante. The draft memo submitted below may be approved.

16/4/52

17.4.52

If as suggested by Legal Dept. it is a ministerial act that the records of the case have been transferred to the Dy. Commissioner, Tanjore, it does not seem why the District Judge should be troubled over the matter again. Ordinarily omission to transfer the records to the ~~Dy. Commissioner instead of the~~ Commissioner will have to be ignored. But, Legal Asst. Secretary when consulted on the phone tells me that the question of jurisdiction will be jeopardised if the District Judge did not transfer the records directly to the Commissioner. In the light of the above, it does not seem worth while to object to the suggestion of Legal. The draft Memo. may issue as ~~ordered~~ above.

18/4/52

2. The more important point in this case is whether the Commissioner, who was a member of the Committee which passed the ~~original~~ order of removal of the hereditary trustee, can again entertain the petition on appeal and deal with it on merits. Legal have left this question open for the decision on the linked file for which he expects the considered views of the Commissioner in the Religious Endowments Dept. Even if the case is transferred to the Commissioner, it cannot be proceeded with further until a decision is given on this point.

18/4/52

18.4.52

pp 7-8 c

From the Commissioner, H.R.&.C.E.(Admn)Deptt. Letter No. 5170/51 Jdl. 3 dated 13-5-52.

Please see the reply of the Commissioner on pp.7-8 c.f.

pp 7-8 c

For the reasons explained in para 2 of his letter, the Commissioner states that the proper course in this case will be to return the petition to the District Court and request the District Court to return it to the petitioner for presentation to the proper authority. The Commissioner also states that he has already addressed Sri K.S. Hegde (former Government Pleader) for his opinion on the desirability of ~~for~~ adopting the above procedure. It does not seem necessary to wait for ~~the~~ his opinion.

Legal may not be consulted
hr
24.5.52

Legal may be requested to advise whether the course of action suggested by the Commissioner may be ~~agreed to~~ adopted.

I do not think that you need give any advice in the matter. It is for the Comm to take legal opinion and act accordingly. The Comm will see the last sentence in the draft on page 5 c/7.

The Comm may be informed accordingly

hr
24.5.52

DMS
S 29.5.52

A draft memo is submitted for approval.

hr
29.5.52

28/5
29/5/52

(Memo No 10535/52. 3 R.W.V (1). 30.5.52)